IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Review Petition (Ld) No. 43 of 2005
in
Chamber Summons No.929 of 2005
in
Suit No.1084 of 1984

Smt.Kusum B.Pedamkar ..Petitioner

vs.

Mrs.Hajiah Nusrat Khanom Payandeh
1(b) Mrs.Sahebian Payandeh
and others ..Plaintiffs

and

1a. Mr.M<ohammed Hassan
Hajati and others ..Defendants

Mr.Chandrakant N.Chavan for petitioner
Mr.Sayyed Akhtar i/b M/s Desai and Diwanji for respondent/original plaintiff
Mr.A.M.Choudhary, Section Officer, Court Receiver, High Court, present.

CORAM: A.M.KHANWILKAR J.
20th December,2005

P.C.

1. Heard the Counsel for the parties.

2. This petition is for review of order dated 5th September, 2005 passed by me in Chamber Summons No.929 of 2005 in suit no.1084 of 1984. In deed, the petitioner may be justified in pointing out that at the relevant time the petitioner was not in a position to place on record the fact that suit no.1084 of 1984 has

been disposed of. That fact can be established from the order sheet dated 29th September, 1997, now produced passed by Shri Justice A.P.Shah (as he then was) in Arbitration Petition No.67 of 1997 in Award No.36 of 1997. In that sense the first basis on which I proceeded to decide the Chamber Summons taken out by the petitioner was an error apparent on the face of record. However, the respondent/plaintiff is justified in contending that there is one more reason which had weighed with me in rejecting the Chamber Summons taken out by the petitioner. In para 4 of my order under review it has been observed that there was no reason to take a different view than the one taken by Justice Kamdar in his order dated 6th June, 2005 as there was no changed circumstance. Even so, in the present case, it is seen that the petitioner is admittedly the tenant in respect of the disputed premises. She was occupying the said premises till possession thereof was taken by the Court Receiver. The petitioner was allowed to occupy the said premises on certain conditions. It has come on record and in fact established position that the petitioner allowed third party to occupy the disputed premises. The said third party has now removed himself from the said premises and has given undertaking

before this Court. The petitioner now gives fresh undertaking before this Court that if the petitioner is allowed to occupy the premises she will ensure that no other person except herself and her family members including her grand son will start some business in the disputed premises. On this undertaking I am inclined to show indulgence to the petitioner by giving her one opportunity having regard to the fact that she is the widow and also that there is no earning member in her family (it is reported that earning son of the petitioner is not on good terms with the petitioner). In the circumstances, the order dated 5th September, 2005 is recalled and instead the following order is passed by consent of the plaintiff.

3. The petitioner is allowed to occupy the disputed premises as agent of the Court Receiver on condition to use the same personally or through her family members for the purpose of conducting business on clear understanding that she will not employ any person in the premises either to do business or for any other reason. Only if the said undertaking is given by the petitioner and her adult family members, the Court Receiver will permit the petitioner to use the premises in question on terms and conditions

on which the petitioner occupied the premises on earlier occasion. Needless to observe that this arrangement will have to continue till the Court Receiver is not discharged by this Court in appropriate proceedings.

4. Counsel for the defendant has appeared and he submitted that he has no objection as the arrangement, which is directed under this order, is essentially between the plaintiff and the petitioner.

5. Petition disposed of on the above terms.